IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.4.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.2275 of 1999

The Commissioner of Income Tax
Tamil Nadu III, Chennai. .. Appellant

Vs.

Shasenan M.Parpia .. Respondent

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 30.04.1999 made in W.P.No.5017 of 1999.

WP.No.5017 of 1999 :

Petition presented under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the issue of Certificate under section 90(1) of the Finance (No.2) Act 1998 in respect of Kar Vivad Samadhan Scheme C.No.KVSS/249/TN III/1998-99/249 dated 22.09.99 arising out of the application of declaration made under section 88 of the Act made by the petitioner on 31st December 1998 and quash the certificate dated 22.02.1999 and direct the respondent to ascertain disputed income inrelation to assessment order 1995-96 as is related to disputed tax arrers under section 87(e)(f) according to law.

For Appellant : Mrs.Pushya Sitaraman, Sr.S.C.
For Respondent : No appearance

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J U D G M E N T
(Delivered by P.D.DINAKARAN,J.)

The above appeal is directed against the order of the learned single Judge dated 30.4.1999 made in W.P.No.5017 of 1999.

2. For the purpose of convenience, the parties are arrayed as per their rank in the writ petition.

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3.1. The writ petitioner is an assessee before the Assistant Commissioner of Income Tax, City Circle VII (3), Chennai. She filed the return of income for the assessment year 1995-96 under the provisions of the Income Tax Act. The assessment was completed on 23.3.1998 determining the total income at Rs.29,26,025/-. The tax payable in respect of the income other than capital gain was determined at Rs.75,516/-, of course after granting necessary rebate under Section 88 of the Act, viz. the amount of tax payable on income other than capital gain was determined at Rs.70,276/- and the capital gain tax was arrived at Rs.5,34,948/-. As per the said assessment order dated 23.3.1998, the tax payable was determined at Rs.8,45,175/-, after making certain addition towards the interest under Sections 234A, 234B, 234C of the Act, which was later on rectified to Rs.6,10,464/-.

3.2. Aspiring benefit under Kar Vivad Samadhan Scheme, 1998, (in short "Samadhan Scheme"), the petitioner made applications under Section 89 of the Samadhan Scheme on 30.12.1998 and 22.2.1999. By order under Section 90(1) of the Finance Act, 1998 dated 22.2.1999, the petitioner was directed to pay a sum of Rs.6,08,987/-, as the amount payable by her towards the full and final settlement of tax arrears covered by the declaration under the Samadhan Scheme.

3.3. Aggrieved by said order, the petitioner preferred W.P.No.5017 of 1999 for a writ of Certiorarified Mandamus calling for the records relating to the issue of the above said Certificate, to quash the same and direct the respondent to ascertain disputed income in relation to the assessment order 1995-96 as was related to disputed tax arrears under section 87(e) of the Act.

3.4. According to the petitioner, her total income for the assessment year 1995-96 consists two segments of income. One is capital gain and the other is income other than capital gain. The income by way of capital gain is taxed at a fixed rate of 20% of an amount of capital gain under Section 112 of the Act and in respect of other income, i.e. income other than capital gain, it is taxed at a progressive rates prescribed under relevant provisions of the Finance Act and the maximum marginal rate of tax was 40% during the relevant assessment year in question. But the same was resisted by the Revenue on the ground that once the petitioner chooses the benefit of Samadhan Scheme, its rights and liabilities would be determined only within the purview of the Samadhan Scheme and not otherwise.

3.5. The learned single Judge, by order dated 30.4.1999, holding that there would be two unintended injuries that might be suffered by the petitioner, one in determining the amount of disputed income and another in payment of higher rate under the Samadhan Scheme and that such contingency was not contemplated nor intended by the legislature under the Samadhan Scheme and that the determination of disputed income at

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Rs.20,29,257/- and the amount payable under the Samadhan Scheme at 20% thereof, viz. Rs.6,08,987/- by applying maximum marginal income rate on the income from capital gain was not in accordance with the Samadhan scheme, set aside the impugned order with the following directions to the respondent:

(i) to set off the refund amount granted for the assessment year 1996-97 against the tax demand for the assessment year 1995-96 against the tax demand for the assessment year 1995-96 in accordance with the notice of demand by the Assistant Commissioner of Income tax dated 29.9.1998 for the assessment year 1996-97; and

(ii) to determine the disputed income in accordance with the directions earlier given and determine the tax payable under the Samadhan Scheme and pass appropriate orders.

4. The learned senior Standing Counsel contends that when the Samadhan Scheme confer certain benefits on those who had not disclosed their income earlier by affording protection against the possible legal consequences of such non disclosure under the Income Tax Act and if the petitioner seeks to claim benefit under such statutory Scheme, her rights and liabilities are to be determined strictly only in accordance with the Samadhan Scheme.

5. Unfortunately, there is no representation on behalf of the petitioner.

6. It is a settled law that in a matter of Samadhan Scheme or any such statutory scheme as the case may be, the Courts have no power to act beyond the terms of the statutory scheme under which the benefits have been granted to the assessee vide Hemalatha Gargya v. Commissioner of Income Tax (259 ITR 1).

7. If that be so, assuming the petitioner would be facing two unintended injuries as observed by the learned single Judge in his order referred supra, it may not be proper for this Court to issue such a direction to work out her tax liability beyond the expressed terms of statutory schemes. Therefore, suffice it to set aside the impugned order dated 22.2.1999 and modify the order of the learned single judge and to remit the matter to the appropriate authority under the Samadhan Scheme to determine the benefits and liabilities of the assessee under the Samadhan Scheme strictly in accordance with the terms of the Samadhan Scheme and pass orders, without reference to any of the observations made by the learned single Judge. While passing such order, the appropriate authority shall also consider the application made by the petitioner on 1.3.1999, as the appropriate authority had already indicated in their proceedings dated 10.3.1999 that they would consider the said application of the petitioner provided she makes payment as demanded under the impugned order.

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The writ appeal is disposed of accordingly. No costs. Consequently, CMP No.19079 of 1999 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kpl

To

1. The Commissioner of Income Tax,
Tamil Nadu III, Chennai.

1 cc To Mr.V.S.Ramakrishnan , Advocate, SR.25034.
1 cc To Mr.Pushya Sitaraman, Standing Counsel for I.T.Cases, SR.25369.

W.A.No.2275 of 1999.

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